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No. 03-1397

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IN THE
SUPREME COURT OF THE UNITED STATES

CIVIL LIBERTIES FOR URBAN BELIEVERS, CHRIST CENTER, CHRISTIAN COVENANT OUTREACH CHURCH, HIS WORD MINISTRIES TO ALL NATIONS, CHRISTIAN BIBLE CHURCH, CHURCH ON THE "WAY" PRAISE CENTER, and MONTE DE SION (MOUNT ZION) CHURCH,

Petitioners,

v.

CITY OF CHICAGO,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

OBJECTION TO MOTION BY THE BECKET FUND FOR RELIGIOUS LIBERTY, ET AL., FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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CIVIL LIBERTIES FOR URBAN BELIEVERS, CHRIST CENTER, CHRISTIAN COVENANT OUTREACH CHURCH, HIS WORD MINISTRIES TO ALL NATIONS, CHRISTIAN BIBLE CHURCH, CHURCH ON THE "WAY" PRAISE CENTER, and MONTE DE SION (MOUNT ZION) CHURCH,

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Respondent, the CITY OF CHICAGO, by its attorney, MARA S. GEORGES, Corporation Counsel of the City of Chicago, hereby objects to the motion by the Becket Fund for Religious Liberty and various religious organizations [hereafter referred to collectively as "the Becket Fund"] for leave to file brief as *amici curiae* in support of petitioners, and states the following in response:

1. The Becket Fund seeks leave to file a brief as *amici curiae* that urges review of an issue that is not included in the questions presented by petitioners. For this reason, the City of Chicago did not consent when the Becket Fund contacted us, and we now object to the filing of the brief.

2. The Becket Fund urges review of only one aspect of the court of appeals' opinion in this case: the court's determination that Chicago's zoning ordinance is not the type of system of individualized exemptions that triggers heightened review under the Free Exercise Clause. The Becket Fund argues that this court's review is needed to address a purported conflict concerning the meaning and consequences of the term "individualized assessments" in this Court's free exercise jurisprudence. See Brief of *Amicus Curiae* the Becket Fund 6. As the Becket Fund readily admits, any issue concerning the scope of the individualized assessments doctrine is "in addition to the questions presented by petitioners." Ibid. And, indeed, the petitioners made only brief mention of the individualized assessments doctrine in a footnote. See Pet. 23-24 n.8. Moreover, as we explain in our brief in opposition, even that cursory argument is waived because it is not fairly included in either of the questions presented. See Brief for Respondent in Opposition 24-25 n.10. Thus, in confining the *amicus* brief to that issue, the Becket Fund urges review of this case on a ground

upon which the petitioners themselves have waived review. See this Court's Rule 14.1(a).

3. While an issue may be fairly included in a question presented if it is a "'predicate to intelligent resolution'" of a question presented, Vance v. Terrazas, 444 U.S. 252, 258-59 n.5 (1980), the question whether Chicago's zoning ordinance is a system of individualized exemptions is not a predicate to either of the petitioners' questions. In this case, petitioners' first question presented concerns only the Equal Protection Clause, which obviously does not relate to the free exercise issue that the Becket Fund presses. And petitioners' second question concerns the nature of a "substantial burden" within the meaning of the Free Exercise Clause and RLUIPA. It is unnecessary to resolve any conflict regarding whether a zoning ordinance creates a system of individualized assessments in order to review that question. Indeed, as petitioners acknowledge, even if Chicago's zoning provisions create a system of individualized assessments, that only begs the question whether churches are substantially burdened by those provisions. See Pet. 23 n.8.

4. The Becket Fund's entire brief is dedicated exclusively to this waived argument. And this Court ordinarily will not consider an issue raised by *amici* where the petitioner has not pursued the issue in the petition for certiorari. See, e.g., Kamen v. Kemper Financial Services, Inc., 500 U.S. 90, 97 n.4

(1991); United States v. Dion, 476 U.S. 734, 746 (1986); United Parcel Service, Inc. v. Mitchell, 451 U.S. 56, 60 n.2 (1981). Since the Becket Fund has addressed only this waived issue, there is no reason for the Court to consider that brief in determining whether to grant review on the two issues raised in the petition.

WHEREFORE, the respondent, the City of Chicago, objects to the motion for leave to file a brief as *amicus curiae* in support of petitioners, and respectfully requests that the motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served all parties required to be served with the Objection to Motion by the Becket Fund for Religious Liberty, et al., for Leave to File Brief as Amici Curiae in Support of Petitioners by placing a copy of the objection in envelopes addressed to the persons named below, at the addresses indicated, and delivering those envelopes to a third-party commercial carrier for overnight delivery on May 12, 2004.

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